

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|                                  |   |                                |
|----------------------------------|---|--------------------------------|
| PREMIER TIERRA HOLDINGS, INC.,   | § |                                |
| <i>Plaintiff,</i>                | § |                                |
|                                  | § |                                |
| v.                               | § | CIVIL ACTION No. 4:09-cv-02872 |
|                                  | § |                                |
| TICOR TITLE INSURANCE COMPANY OF | § |                                |
| FLORIDA, INC.,                   | § |                                |
| <i>Defendant.</i>                | § |                                |

**ORDER**

Before the court is defendant Ticor Title Insurance Company of Florida, Inc.’s motion to dismiss (Dkt. 23). Attached to the motion is the insurance policy in issue (Dkt. 23-1) and a hearing transcript to the scheduling conference held on December 14, 2010 (Dkt. 23-2). It is apparent from these attachments that the motion should be treated as a motion for summary judgment under Rule 56. Fed. R. Civ. P. 12(d); Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 1366 (3d ed. 2010). Thus the parties “must be given a reasonable opportunity to present all the material that is pertinent to the motion.” Fed. R. Civ. P. 12(d); *cf. Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1284 (5th Cir. 1990) (under former Rule 56(c), after a district court gave notice it would treat a motion to dismiss as a summary judgment motion, it was required to allow the parties at least ten days to submit additional evidence before it renders judgment). In accordance with Rule 12(d), the parties shall file supplemental briefs with summary judgment evidence on or before April 27, 2011.

Signed at Houston, Texas on April 6, 2011.

  
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Stephen Wm Smith  
United States Magistrate Judge